

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Thomas A. Kahrl, Old Lyme

File No. 2007-185

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to C.G.S. § 9-7b and asserts that Regional School District No. 18 (Lyme/Old Lyme) Board of Education improperly used public funds to prepare and distribute materials which advocated the approval of a referendum. That referendum at issue concerned the issuance of over \$53 million dollar in bonds to fund the construction of a new school.

After the investigation of the complaint, the Commission makes the following findings and conclusions:

1. Regional School District No. 18 is composed of the towns of Lyme and Old Lyme and is governed by an elected regional Board of Education from both towns pursuant Connecticut General Statutes § 10-46.
2. According to General Statutes § 10-56, a regional school district has the power to issue bonds to build, equip, and expand schools if so authorized by referendum. General Statutes § 10-56 further provides that such referendum shall be conducted in accordance with the procedure set forth in section 10-47c. Section 10-47c provides that at a district meeting, the regional board of education must set forth to the public the question to be presented at a referendum and, after such public hearing; the board shall set the date for the referendum.
3. General Statutes § 9-369b provides the prohibition on the use of municipal funds:

“(a) Except as provided in subsection (b) of this section, any municipality may, by vote of its legislative body, authorize the preparation and printing of concise explanatory texts of local proposals or questions **approved for submission to the electors of a municipality at a referendum. . . . [N]o expenditure of state or municipal funds shall be made to influence any person to vote for approval or disapproval of any such proposal or question.**”

4. It is well-established that prohibition in General Statutes § 9-369b only applies when a referendum is “legally pending.” See, e.g., *Complaint of William and Kathleen Oppenheimer, et. al., Redding File No. 2003-180*. According to Commission precedent, a referendum is not “legally pending” until all of the necessary legal conditions have been satisfied to ensure that the referendum will take place. *Id.* In the present case, General Statutes § 10-47c sets forth the necessary legal conditions that would ensure that a referendum take place. As noted above, the board has to hold a public district meeting concerning the

question to be presented for referenda and set the date on which the referenda would be held.

5. On March 28, 2007, the Board of Education for Regional School District No. 18 issued a "Notice of Special District Meeting" which warned the legal voters of that district that a special district meeting would be held on April 4, 2007 concerning the proposed resolution. That resolution involved the issuance of \$53,963,000 in bonds for the construction of a new school. The notice also indicated that the Board would vote on the resolution and set a date for the referendum after that special meeting.
6. The special meeting was held on April 4, 2007. During that meeting, the Board voted to set May 8, 2007 as the date for the referenda concerning the issuance of \$53,963,000 in bonds to finance the construction of a new high school.
7. As such, the referendum at issue was "legally pending" as of April 4, 2007.
8. The Complainant, a resident of Old Lyme, alleges that the Board of Education (hereinafter "potential Respondents") unlawfully used public funds in the form of money, school facilities, two newsletters, two videos, and two letters from the superintendent, to promote the success of the referendum at issue. However, only two of the items mentioned by the Complainant were utilized by the potential Respondents after April 4, 2007. The Commission also identified David Klein, the Superintendent of Regional School District No. 18, as a potential Respondent.
9. The first was a thirty-five minute video entitled "The Building and Renovation Project Lyme-Old Lyme High School." On February 21, 2007, the board of education for Regional School District No. 18 paid \$2000 in public funds to have the video produced. A reasonable person would likely conclude that the video advocates the need for the construction a new high school and, thus, was made and later utilized to influence a person to vote for approval of the referendum at issue.
10. In late February of 2007, the video was provided to the Comcast public access studio that serviced the towns of Lyme and Old Lyme to be used in their programming schedule. That studio is not financed by municipal funds. The potential respondents did not control when the video would be aired but there is some indication that they asked that it not be aired after the referendum was pending. Instead, the studio maintained full control over programming and aired the video on the dates and at the times it did because there was an opening in the schedule at those times and the video had an odd run-time (i.e., 35 minutes). The video was aired from 6:55 p.m. to 7:30 p.m. on March 1st, 3rd, 8th, 15th, 22nd, 29th, and 31st.
11. The video was also aired, however, one time on April 5, 2007. While this was after the referendum was "legally pending," under the circumstances of this case, there is insufficient evidence to establish that the potential Respondents controlled the dates and times the video would air and, as such, the evidence

does not establish that an expenditure was made to influence the outcome of the referendum in violation of General Statutes § 9-369b.

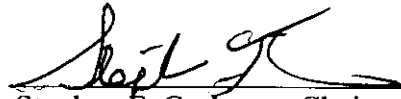
12. The second event that occurred after the referendum was “legally pending” was a tour of school district’s current high school. That tour occurred on April 9, 2007 and was given on a voluntary basis by members of the Board of Education and students of the high school. There is insufficient evidence to establish, however, that anyone or anything expressly or implicitly advocated the success of the pending referendum during that tour. Instead, the investigation revealed that potential Respondent Klein gave specific instructions that no staff member was to participate in the tour and that no one was to directly or indirectly advocate about the pending referendum. In light of the foregoing evidence, there is insufficient evidence to establish that General Statutes § 9-369b was violated.
13. It is therefore concluded that the potential Respondents have not committed any violations of election laws in connection with the allegations set forth in the complaint.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the case be dismissed.

Adopted this 18th day of July, 2007 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen F. Cashman".

Stephen F. Cashman, Chairperson
By Order of the Commission